

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL ALLEN YOCOM,  
Petitioner,  
v.  
KATHLEEN ALLISON,  
Respondent.

Case No. 1:21-cv-00187-NONE-HBK  
ORDER SANCTIONING PETITIONER  
ORDER DENYING PETITIONER'S MOTION  
FOR RULING  
ORDER DENYING PETITIONER'S MOTION  
FOR EVIDENTIARY HEARING  
ORDER DENYING PETITIONER'S MOTION  
FOR RECUSAL  
(Doc. No. 52)

Petitioner Michael Allen Yocom, a state prisoner proceeding *pro se*, has pending a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1). Before the Court is Petitioner's "motion to screen the petition," which the Court construes as a motion for ruling on his petition. (Doc. No. 52). Incorporated in this motion is Petitioner's request for an evidentiary hearing and request that the undersigned recuse herself from this case. (*See generally id.*). The Court will deny Petitioner's motions. Further, the Court will sanction Petitioner.

On July 12, 2021, in light of Petitioner's repeated duplicative and frivolous filings (*see e.g.* Doc. Nos. 6, 8, 14, 18, 20, 27, 31, 32, 33, 34, 40, 42, 48, 50), the Court ordered Petitioner to show cause why he should not be subject to sanctions. (Doc. No. 47). The Court ordered Petitioner to respond to this show cause order within 14 days. (*Id.* at 3). Petitioner has not

1 responded to the order to show cause and the time for doing so has passed. Instead of responding  
2 to the order to show cause, Petitioner filed two frivolous and repetitive filings, both of which  
3 were stricken from the docket. (Doc. Nos. 48, 49, 50, 51). Petitioner now moves the Court to  
4 rule on his petition, grant an evidentiary hearing, and for the undersigned to recuse herself from  
5 the case. (Doc. No. 52).

6 **A. Motion for Ruling on Petition**

7 Petitioner moves the Court to rule on his petition expeditiously. (Doc. No. 52). The  
8 Court has the discretion to manage its own docket. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th  
9 Cir. 1992). And this Court has “long labored under one of the heaviest caseloads in the nation.”  
10 *See Standing Order in Light of Ongoing Judicial Emergency in Eastern District of California.*<sup>1</sup>  
11 Accordingly, the Petitioner is advised that the Court will issue findings and recommendations  
12 regarding his petition in due course. Therefore, Petitioner’s motion for ruling on the petition is  
13 denied.

14 **B. Motion for Evidentiary Hearing**

15 Petitioner seeks an evidentiary hearing. (Doc. No. 52). Petitioner has previously moved  
16 for an evidentiary hearing six times, all of which have been denied. (Doc. Nos. 8, 20, 33, 40, 42,  
17 46). Evidentiary hearings are granted only under limited circumstances in habeas proceedings.  
18 *See 28 U.S.C. § 2254(e)(2)(A)(ii).* Although Respondent has now filed an answer to the petition,  
19 the Court has not yet reviewed the briefing. The Court will review the briefing and make findings  
20 and recommendations in due course. If the Court determines that an evidentiary hearing is  
21 warranted, it will schedule one at that time. *See Rules Governing Section 2254 Cases, R. 8(a).*

22 **C. Motion for Recusal**

23 Petitioner seeks the undersigned to recuse herself from this case. (Doc. No. 52). The  
24 standard for judicial recusal is as follows: “[w]hether a reasonable person with knowledge of all  
25 the facts would conclude that the judge’s impartiality might reasonably be questioned.” *United*  
26 *States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (per curiam) (brackets and internal  
27

---

28 <sup>1</sup> Available at: <http://www.caed.uscourts.gov/caednew/assets/File/Standing%20Order%20CV.pdf>; last accessed September 14, 2021.

1 quotation marks omitted). Importantly, “[p]arties cannot attack a judge’s impartiality on the basis  
2 of information and beliefs acquired while acting in his or her judicial capacity.” *United States v.*  
3 *Frias-Ramirez*, 670 F.2d 849, 853 n.6 (9th Cir. 1982). “As the Supreme Court has explained,  
4 ‘opinions formed by the judge on the basis of facts introduced or events occurring in the course of  
5 the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality  
6 motion unless they display a deep-seated favoritism or antagonism that would make fair judgment  
7 impossible.” *United States v. McTiernan*, 695 F.3d 882, 891-92 (9th Cir. 2012) (citing *Liteky v.*  
8 *United States*, 510 U.S. 540, 555 (1994)).

9 Here, Petitioner has presented no basis for the recusal of the undersigned. Petitioner has  
10 not stated, much less provided evidence, that the undersigned is biased against him. Rather,  
11 Petitioner seemingly seeks recusal because he disagrees with the pace of the litigation of this  
12 case. Accordingly, Petitioner’s motion for recusal is denied.

13 **D. Order Sanctioning Petitioner**

14 “Flagrant abuse of the judicial process cannot be tolerated because it enables one person  
15 to preempt the use of judicial time that properly could be used to consider the meritorious claims  
16 of other litigants.” *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007).  
17 Here, Petitioner has been warned many times that his repeated frivolous and duplicative filings  
18 will subject him to sanctions. (Doc. Nos. 40, 44, 47, 51). Because Petitioner has continued to  
19 make such filings, the Court will subject him to sanctions. The Court orders that all future filings  
20 shall be screened by the Court prior to entry on the docket. If the Court deems any future filings  
21 to be frivolous and/or duplicative, the Court will direct the Clerk of Court to return the filing to  
22 the Petitioner.

23 Accordingly, it is **ORDERED**:

24 1. Petitioner’s motion for ruling on the petition (Doc. No. 52) is DENIED;  
25 2. Petitioner’s motion for an evidentiary hearing (Doc. No. 52) is DENIED;  
26 3. Petitioner’s motion for recusal (Doc. No. 52) is DENIED; and  
27 4. Petitioner is subject to sanctions in accordance with the above. The Clerk of Court  
28 shall notify the Court prior to the docketing of any future filings by Petitioner, providing

1 an opportunity to the Court to screen such filings and direct the Clerk of Court to return  
2 them to Petitioner if appropriate.

3

4

Dated: September 15, 2021

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28



HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE